IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2667 OF 2005

Hutchison Essar Ltd. .. Petitioners

V/s

Union of India & Ors. .. Respondents

Mr.C.U. Singh with Mr.P.S. Anand for the Petitioners.

Mr.R.V. Desai, Senior Advocate with Mrs. Neeta Masurkar for the Respondents.

CORAM : H.L. GOKHALE &
J.P. DEVADHAR, JJ.

DATE : 23RD NOVEMBER 2005

P.C. :

1. Heard Mr.Singh for the Petitioners and Mr.Desai for the Respondents.

2. Mr.Singh seeks to convert this writ petition into an Appeal under section 35-G of the Central Excise Act, 1944. Mr.Desai submits that neither a writ nor an appeal is maintainable. Even so, inasmuch as it is for the party concerned to decide as to whether it should file a writ or an appeal, we permit this writ to be converted into an appeal. It will be numbered accordingly. The maintainability of the appeal will be examined when the appeal comes up for admission.

3. We are informed that the question with respect to the chargeability of the service tax by the Central Government is under consideration before the Apex Court when sales tax is also charged simultaneously by the State Government. This being the position, the appeal, when numbered, be listed on 16th January 2006, by which date we will know about the developments in the Apex Court. We are not passing any interim order.

4. Since the writ is being converted into an appeal, the Petitioners will have leave to amend and add the necessary questions of law.

(H.L. GOKHALE, J.)

(J.P. DEVADHAR, J.)